

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:F:HAR:POSTF-136084-02

CJSantaniello

date: July 16, 2002

to: Revenue Agent Roula Karavitis, Norwalk, Group 1541
through Rosemary Seretti, Team Manager, Norwalk, Group 1541

from: Associate Area Counsel, LMSB, Area 1 (LM:F:HAR)

subject: Large Case Advisory Opinion - [REDACTED]

We are responding to your June 26, 2002 telephone call, during which you requested our advice regarding whether the taxpayer's foreign subsidiary is a proper Tax Matters Partner (TMP) of a TEFRA partnership in which the taxpayer's domestic subsidiary is a partner and, if so, who should the examination team deal with during the audit relative to obtaining partnership information. For the reasons set forth below, we believe that the foreign subsidiary is a proper TMP, and that all Information Document Requests (IDRs) should be issued to the TMP or, alternatively, its designee under a section 6103 consent. This memorandum should not be cited as precedent.

Issues

Whether the taxpayer's foreign subsidiary is a proper Tax Matters Partner of a TEFRA partnership in which the taxpayer's domestic subsidiary is a partner. UIL No. 6231.00-00

Facts

The taxpayer, the common parent of a consolidated group, is under audit for the years [REDACTED] and [REDACTED]. During the examination years, [REDACTED], Inc., the taxpayer's wholly-owned domestic subsidiary, was a partner in [REDACTED], LP, a TEFRA partnership (the partnership).^{1/} The partnership's named TMP was [REDACTED] one of the taxpayer's controlled foreign corporations. [REDACTED] was the partnership's sole general partner.

^{1/} The partnership has two partners, one of which is a flow-through entity that filed a Form 1065.

The partnership is also presently the subject of an open examination for the years [REDACTED] and [REDACTED] by the same examination team. Recently, the examination team received Form 870-P, signed by the TMP, extending the assessment period for the partnership years [REDACTED] and [REDACTED] to [REDACTED].

Discussion

Treas. Reg. § 301.6231(a)(7)-1(b) provides that a person may be designated as the TMP of a partnership for a taxable year only if that person (i) was a general partner in the partnership at some time during the taxable year for which the designation is made, or (ii) is a general partner in the partnership as of the time the designation is made. The term "person" is defined to include a corporation. I.R.C. § 7701(a)(3); Treas. Reg. § 301.6231(a)(7)-(b)(2).

Designations of a TMP may be made on the partnership return for that taxable year in accordance with the instructions to the form. Treas. Reg. § 301.6231(a)(7)-1(c). The partnership may also designate a TMP for a partnership taxable year at any time after the filing of a partnership return for that taxable year by filing a statement with the service center with which the partnership return was filed. Treas. Reg. § 301.6231(a)(7)-1(e). A designation of a TMP for a partnership taxable year under paragraph (e) supercedes all prior TMP designations. Treas. Reg. § 301.6231(a)(7)-1(h).

In the absence of a designation, or in the event a TMP is terminated without a subsequent designation, the TMP is the general partner having the largest profits interest in the partnership at the close of the taxable year. Treas. Reg. § 301.6231(a)(7)-1(m)(2). The determination of which general partner has the largest profits interest is based on the year-end profits interest reported on the Schedules K-1 filed with the partnership return for the taxable year for which the determination is being made. Id.

If any United States person is eligible under subsection (a) to be designated as the TMP of a partnership for a taxable year, no person who is not a United States person may be designated as the TMP of that partnership for that year without the Commissioner's consent. Treas. Reg. § 301.6231(a)(7)-1(b)(2).

In this case, the partnership has only one general partner. Therefore, even though [REDACTED] the designated TMP, is a foreign person, it is a proper TMP for the partnership under Treas. Reg. § 301.6231(a)(7)-1(b)(2). Accordingly, any IDRs issued for the purpose of obtaining information regarding the partnership

should be forwarded to [REDACTED] or its designee under a properly executed Form 2848.

We are simultaneously submitting this memorandum to the National Office for post-review and any guidance they may deem appropriate. Consequently, you should not take any action based on the advice contained herein during the 10-day review period. We will inform you of any modification or suggestions, and, if necessary, we will send you a supplemental memorandum incorporating any such recommendation.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

Since there is no further action required by this office, we will close our file in this matter ten days from the issuance of this memorandum or upon our receipt of written advice from the National Office, whichever occurs later.

Please call Carmino J. Santaniello at (860) 290-4077 if you have any questions or require further information in this matter.

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By: _____
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Attorney